Supreme Court, U.S.
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No. 99-1348

In The Supreme Court of the United States

BVR LIQUIDATING, INCORPORATED, formerly known as Beaver Precision Products, Inc.; UNITRON, INC.,
Petitioners.

v.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, AND ITS LOCAL UNION NO. 540; RICHARD POLLARD; RONALD MANKE; THOMAS ELDON; ALLEN LAWRENCE,
Respondents,

On Petition For Writ Of Certiorari To The United States Court of Appeals For The Sixth Circuit

REPLY TO BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the *Yard-Man* inference/ presumption -- that retiree health care benefits vest for the lifetime of the retiree even when the terms of the benefits contract lack any clear, affirmative vesting language -- is contrary both to traditional principles of contract interpretation and to Congress' intent in specifically choosing not to provide for the vesting of employee welfare benefits under the Employee Retirement Income Security Act, 29 U.S.C. Sec. 1001, *et seq.*

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I. ERRORS IN THE UAW'S "COUNTERSTATEMENT OF THE FACTS"

The provision of the 1988 insurance agreement – Section 9C – which increased the benefits for post-July 1988 retirees and extended benefits to their spouses and dependents, but also eliminated the vesting "date of death" durational language. The Union's[1] "Counter-statement of the Facts," at Page 3 of its Brief in Opposition (hereinafter, the "Brief"), mischaracterizes that provision as "language the company drafted in 1988..." That language, however, was collectively bargained for by the parties, and the Union cites to nothing in the record that supports such a characterization.

The rest of that Counterstatement focuses its attention on extrinsic evidence: the Union's proposal, during the 1988 contract negotiations, that health care benefits be "expanded" to include spouses, surviving spouses and dependents (Brief, at Page 2);[2] and the Company's failure to

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[1] For convenience, Petitioner BVR Liquidating, Incorporated, f/k/a "Beaver Precision Products, Inc." shall be referred to as "BVR"; Petitioner Unitron, Inc. shall be referred to as "Unitron"; BVR and Unitron shall be collectively referred to as the "Company"; and all of the Respondents shall collectively be referred to as the "Union."

[2] Contrary to the Union's contention at Page 2 of its Brief, the Company never "agreed" to the vesting of those "expanded" benefits for the lifetimes of the retirees, their spouses, surviving spouses or dependents. As the Company has consistently argued, the omission of the express "date of death" language from the expanded benefit provision for

propose ending vested lifetime benefits during the 1988 negotiations. (Brief, at Page 3).

As discussed below, such a focus on extrinsic matters instead of on the contract language itself is the impermissible result of the Sixth Circuit's application of the *Yard-Man*[3] inference/ presumption to (in this case) create an ambiguity out of certain contract language that, if read as part of the whole contract without application of that inference/ presumption, unambiguously provided for non-vested benefits. By then using extrinsic evidence to resolve that artificial ambiguity of its own making, the court has created its own contract.

II. THE UNION'S REASONS FOR DENYING THE WRIT ARE SPECIOUS

The Union argues, in its "Reasons for Denying the Writ," that this is a "garden-variety" contract interpretation case (Brief, at Page 3) with "[n]o overarching theory" dictating its result (Brief, at Page 4); and one that has been decided merely by applying the "standard tools of contract interpretation." (Brief, at Page 5).

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post-July 1, 1988 retirees (Section 9C), when viewed in the light of the durational limitation of Section 1A of that contract, clearly expresses the parties' intention to make those expanded benefits non-vested and terminable upon the contract's expiration.

[3] *International Union v. Yard-Man*, 716 F.2d 1476 (6th Cir. 1983), *cert. denied*, 465 U.S. 1007 (1984)

That position is belied by the dominant role the *Yard-Man* inference/presumption – that parties to a collectively bargained agreement intend retiree welfare benefits to be vested – has played in Sixth Circuit decisions since 1983, and in its decision in this case.

It is further belied by the fact that four other circuit courts of appeals have seen fit to reject that kind of inference/presumption;[4] and that two of those courts have done so by referring to it by name.[5]

The contract language in this case presents this Court with the best opportunity to date for deciding that the *Yard-Man* inference/presumption is not, and should not become, a "standard tool of contract interpretation" as the Union advocates. By seizing this opportunity, this Court can end the years of disagreement among the circuits that has created a virtual minefield of inconsistent decisions and turned

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[4] The Third Circuit, in *International Union v. Skinner Engine Co.*, 188 F.3d 130 (3rd Cir. 1999); the Fifth Circuit, in *International Association of Machinists v. Masonite Corp.*, 122 F.3d 228 (5th Cir. 1997); the Seventh Circuit, in *Bidlack v. Wheelabrator Corp.*, 993 F.2d 603 (7th Cir.), *cert. denied*, 510 U.S. 909 (1993); and the Eighth Circuit, in *Anderson v. Alpha Portland Industries, Inc.*, 836 F.2d 1512 (8th Cir. 1988), *cert. denied*, 489 U.S. 1051 (1989).

[5] The Third Circuit, in *International Union v. Skinner Engine Co.*; and the Eighth Circuit, in *Anderson v. Alpha Portland Industries, Inc.*

enforcement of collectively bargained employee welfare agreements into a jurisdictional lottery.

III. THE SIXTH CIRCUIT APPLIED THE *YARD-MAN* INFERENCE/PRESUMPTION TO IMPROPERLY CREATE A CONTRACT AMBIGUITY THAT IT COULD THEN RESOLVE WITH EXTRINSIC EVIDENCE

The pernicious nature of the *Yard-Man* inference/presumption is highlighted by the prominent role extrinsic evidence – and not the actual language of the applicable insurance contract – plays in Section I of the Union's Brief, in which the Union repeatedly asserts that the Sixth Circuit applied "traditional tools of contract construction" when it held that Section 9C of the contract unambiguously provided for vested retiree health care benefits.

Despite the Union's argument that the *Yard-Man* inference/presumption "played no role in the determination that the contract in this case was ambiguous, or in the [Sixth Circuit's] examination of extrinsic evidence to resolve that ambiguity" (Brief, at Page 8), it is obvious from even a cursory reading of the decision below that such is not the case.

After beginning its analysis of the contract language with a rote recitation of the generally accepted rules of contract interpretation, the Sixth Circuit launches into a discussion of retiree health care benefits as "status benefits" before concluding that

> [a]lthough the *Yard-Man* presumption is only an inference that the parties intended for benefits to vest, it is appropriate for the court to apply this presumption in this case.[6]

Apdx. A-10.

Only by first applying that inference/presumption was the Sixth Circuit able to interpret Section 9C language that is devoid of any durational term ("Employees who retire on or after July 1, 1988 shall have...the [various medical coverages] continued..."[7]) as unambiguously providing for vested lifetime retiree health care benefits.

Because the Sixth Circuit did not state that the Section 9C benefits were unambiguously vested until *after* its acknowledgment that the *Yard-Man* "presumption" was applicable, the *Yard-Man* "presumption" obviously dictated the court's threshold determination that the Section 9C language is unambiguous.

The determinative effect of the *Yard-Man* inference/presumption is also corroborated by the court's holding that the Section 9C language

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[6] The very fact that the Sixth Circuit is willing to use the terms "presumption" and "inference" interchangeably when referring to the central holding in *Yard-Man* further illustrates the susceptibility of that concept to inconsistent applications, if not outright misuse.

[7] Appendix, A-5, at note 5.

was comparable to language that it previously held as establishing vested benefits in *Helwig v. Kelsey-Hayes Co.*, 93 F.3d 243 (6th Cir. 1996).[8] Apdx. A-11 and A-12.

Although the *Helwig* court stated that *Yard-Man* was not applicable to the facts of that case, it expressly based its conclusion that certain operative welfare plan language providing that retiree health care benefits "are continued" without a specific duration demonstrated an intent to vest benefits, on its earlier decision of *Policy v. Powell Pressed Steel Company*, 770 F.2d 609 (6th Cir. 1985). *Policy*, however, is a decision permeated by the *Yard-Man* "inference that the pensioner's benefits continue for life, not for the remainder of the collective bargaining agreement." 770 F.2d at 614-15.

Had that court truly applied the traditional tools of contract interpretation instead of the *Yard-Man* inference/presumption, it would have been compelled to find that health care benefits for the post-1988 retirees and their families terminated upon the expiration of the last in the series of collective bargaining agreements containing those terms.[9]

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[8] *Helwig* was procedurally different from this case because it was an appeal from the district court's entry of a preliminary injunction. Accordingly, the applicable standard of review was the highly deferential abuse of discretion standard, not the *de novo* standard applicable to cases such as this one which have been decided on summary judgment.

IV. THE THIRD, FIFTH, SEVENTH AND EIGHTH CIRCUITS HAVE REJECTED THE *YARD-MAN* INFERENCE/ PRESUMPTION, THEREBY CREATING A CLEAR SPLIT AMONG THE CIRCUITS

The Union admits that certain other circuit courts of appeals "have balked at the use of the term 'inference' in describing the tools used to interpret collectively bargained contracts." (Brief, at Page 13). The Union, however, attempts to minimize that fact by noting that those circuits apply other rules of contract interpretation; and that the "lack of unanimity of result" is not the result of applying the *Yard-Man* inference/

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[9] The traditional contract interpretation factors would have required the court to consider (a) the lack of specific durational language in Section 9C (for post-1988 retirees) compared to the specific date-of-death language in Section 9B (for pre-1988 retirees); and (b) Section 9C's improved benefits for post-1988 retirees (including first-time benefits for family members) but limited to the contract's term, in comparison to Section 9B's inferior benefits for pre-1988 retirees only (not their families) but with lifetime duration. More importantly, however, it would have required that Section 9C's lack of specific durational language be viewed in the light of Section 1A's prohibition against benefits extending beyond the contract's term "except where the Plan specifically provides otherwise."

This last distinction is why the Company never contested the pre-July 1988 retirees continuing to receive their health care benefits while it has contested continued benefits for post-July 1988 retirees and their families.

presumption, but merely a function of "the different facts of each case, and not from any difference in the rules of contract interpretation." (Brief, at Page 10).

It borders on the absurd, however, to suggest that any legal inference or presumption, especially one that has been as prominent in employee benefit law as the *Yard-Man* inference/presumption has been for the past seventeen years, is not a significant factor in the interpretation of employee welfare benefits contracts by those circuits that utilize it.[10]

Such a suggestion is also belied by the Sixth Circuit's opinion below, in which *Yard-Man* and its inference/presumption is mentioned so prominently and repeatedly that it is clearly the only factor identified by that court in affirming the district court's finding that the benefit provision of Section 9C, standing alone, "was unambiguous and demonstrated the parties' intent to provide retirees and their dependents lifetime health care benefits." Apdx. A-12.

Finally, it is belied by the Courts of Appeals for the Third, Fifth, Seventh and Eighth Circuits rejecting it as a factor in contract interpretation. If the *Yard-Man* inference/presumption were irrelevant as a tool for contract interpretation, there would be no reason for the Third Circuit to disagree with it by name and suggest that it "may be contrary to Congress' intent in choosing specifically not to provide for

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[10] The First, Fourth, Sixth and Eleventh Circuits have all applied the *Yard-Man* inference/presumption.

the vesting of employee welfare benefits."[11] Nor would there be any reason for the Eighth Circuit to also disagree with it by name and refer to it as "illogical" and "gratuitous."[12]

While the *Yard-Man* inference/presumption may not have been the *sole* dispositive factor in any of the cases in which it has been applied, there can be no reasonable doubt that it was at least one of the dispositive factors; and in the present case, it was used to create an ambiguity and justify the consideration of extrinsic evidence. As such, it is able to influence the outcome of a case in ways unintended by the parties, and inconsistent with -- if not contrary to -- express contract language.

V. APPLICATION OF THE *YARD-MAN* INFERENCE/PRESUMPTION FRUSTRATES THE MEANING OF THE CONTRACT LANGUAGE

In arguing that the decisions of the Third, Fifth, Seventh and Eighth Circuits are somehow consistent with the Sixth Circuit's contractual analysis notwithstanding the Sixth Circuit's use of the *Yard-Man* inference/presumption, the Union ignores the fact that those courts' refusal to apply that inference/presumption was outcome determinative.

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[11] *International Union v. Skinner Engine Co.*, 188 F.3d at 140.

[12] *Anderson v. Alpha Portland Industries, Inc.*, 836 F.2d at 1517.

For example, had the *Yard-Man* inference/ presumption been applied to the contract ambiguities that caused the Fifth Circuit in *International Association of Machinists v. Masonite Corporation* and the Seventh Circuit in *Bidlack v. Wheelabrator Corp.* to remand those cases for consideration of extrinsic evidence of intent, those ambiguities would have been resolved in favor of vested benefits without the need for remand.

The Eighth Circuit, in *Anderson v. Alpha Portland Industries, Inc.*, affirmed the dismissal of a claim for vested retiree health care benefits by expressly refusing to apply the *Yard-Man* inference/presumption to override "specific durational clauses in the...agreements [that] show an intent to limit benefits to the duration of the agreement." 836 F.2d at 1519.

Echoing the reasoning of the Eighth Circuit in *Anderson*, the Third Circuit, in *International Union v. Skinner Engine Co.*, also refused to apply the *Yard-Man* inference/ presumption when determining that the contract phrases "will continue" and "shall remain" did not – especially in the light of other language in the contracts limiting the duration of benefits to the term of the contract – reflect an intent to vest those benefits for the lifetimes of the retirees. 188 F.3d at 141.

In each of those cases, therefore, the refusal to apply the *Yard-Man* inference/ presumption determined the outcome.

It is neither an oversight nor a coincidence, therefore, that the Union studiously ignores the duration of benefits limiting language in Section 1A of the contract. That language, if it had been considered with the Section 9C language and interpreted without the *Yard-Man* inference/ presumption, would have yielded the same result as in *Skinner Engine.*

By applying the *Yard-Man* inference/ presumption to find the Section 9C benefits language unambiguously vested, however, the Sixth Circuit was able to treat the durational limitation language of the Section 1A as an ambiguity causing, instead of and ambiguity resolving, provision. That having been done, that court was free to use one-sided extrinsic evidence to create the contract's rights and obligations as it saw fit.

CONCLUSION

The *Yard-Man* inference/presumption calls into question the meaning of each collectively-bargained retiree welfare benefits contract. The *Yard-Man* inference/presumption, therefore, jeopardizes the predictable and consistent interpretation of employee welfare benefit contracts. It should be eliminated; and, accordingly, *certiorari* should be granted.

Respectfully submitted,

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